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No. _____

Office-Supreme Court, U.S.
FILED
AUG 30 1983
ALEXANDER L. STEVAS,
CLERK

AT LAW
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JAMES JACQUES, GLORIA JACQUES, APPELLANTS

v.

UNITED STATES OF AMERICA AND
TONY PACHECO, JR., REVENUE AGENT,
APPELLEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BY SPECIAL APPEARANCE

JURISDICTIONAL STATEMENT

JAMES JACQUES
GLORIA JACQUES
P. O. Box 23613
San Jose, California 95153
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In Propria Personam

QUESTIONS PRESENTED

1. Whether Congress exceeded its authority as granted by the Constitution in the instance of delegating to the Secretary of the Treasury the power to inquire into the private affairs of the individual by promulgating regulations in violation of the Fourth Amendment by requiring continual surveillance without probable cause of private citizens, namely, James Jacques and Gloria Jacques, through requiring certain banks to record and maintain copies of checks, drafts and identifying records revealing the appellants' daily activities over a period of years?

2. Whether the Secretary of Treasury has exceeded his authority as delegated by Congress when

(a) records are summonsed from banks without explicit statutory authority for using them to prove 'income', and

(b) checks not in excess of $100 are summonsed from banks, in addition to checks deposited to accounts?

3. Whether jurisdiction of a federal district court or a court of appeals can be presumed in violation of Federal Rules of Civil Procedure Rule 12(h)(3)?

4. Whether a proceeding can be declared 'moot' without the issue of jurisdiction and law being addressed by the court?

TABLE OF CONTENTS

Page

Opinions below 2
Jurisdiction 3
Constitutional and statutory provisions involved 3
Statement 4
The question is substantial 5
Conclusion 12
Appendix A 1a
Appendix B 1b

TABLE OF AUTHORITIES

Cases:

Adkins v. Children's Hospital, 261 U.S. 525 (1922) 11
Ansbro v. United States, 159 U.S. 695 (1895) 2
Bailey v. Alabama, 219 U.S. 219 (1910) 7
Boske v. Comingore, 177 U.S. 459 (1899) 7
Bowers v. Kerbaugh-Empire Co., 271 U.S. 170 (1925) 9
Boyd v. United States, 116 U.S. 616 (1886) 7
Burdeau v. McDowell, 256 U.S. 465 (1920) 7, 8
Burge v. Richardson, 321 F. Supp. 646 (1971) 2
California Bankers Assn. v. Shultz, 416 U.S. 21 (1973) .. passim
Chapman v. Houston, 441 U.S. 600 (1979) 9
Doe v. Bolton, 410 U.S. 179 (1973) 10
Edwards v. Keith, 231 F. Rep. 110 (1916) 8
Ex Parte Jackson, 96 U.S. 727 (1877) 6
Flint v. Stone Tracy Co., 220 U.S. 107 (1910) 6
Glidden Company v. Zdanok, 368 U.S. 814 (1961) 5
Lillions v. Gibbs, 289 P2d 203 (1955) 7
Linder v. United States, 268 U.S. 5 (1924) 7
M'Cullock v. Maryand, 17 U.S. 316 (1819) 5
McGrain v. Daughtry, 273 U.S. 135 (1920) 5
McNutt v. GMAC, 298 U.S. 178 (1935) 9
New Lamp Chimney Co. v. Andonia Brass & Copper Co., 91 U.S. 656 9
North Carolina v. Rice, 404 U.S. 244 (1971) 10

Rhode Island v. Massachusetts, 37 U.S. 657 (1838) 2
Riesman v. Caplin, 375 U.S. 440 (1964) 3
Roe v. Wade, 410 U.S. 113 (1973) 10
Speiser v. Randall, 357 U.S. 513 (1958) 7
St. Pierre v. United States, 319 U.S. 41 (1942) 10
State ex rel. Dupont-Fort Lewis School District 7 v. Bruno., 62 Wash. 2d 790 7
Super Tire Engineering Co. v. McCorkle, 416 U.S. 115 (1974) 9, 10
The Betsy, 4 Dall 8 (1794) 5
United States v. Harris, 106 S.Ct. 635 (1882) 5
United States v. Lombardo, 241 U.S. 73 (1915) 7
United States v. United States District Court, 402 U.S. 297 (1972) 10
Warden v. Hayden, 387 U.S. 294 (1957) 10

Constitution, statute and regulation:

United States Constitution:

Article I, Section 8 ..... 2, 4, 8, 9
Article III, Section 2 ..... 9, 11, 13
Fourth Amendment 2, 5

Statutes:

Public Law 91-508, Title I, aka Bank Secrecy Act .. passim
5 USC 554(b)(2) 9
5 USC 554(d) 9
18 USC 2510(5) 5, 6
18 USC 3104 5
18 USC 3504(b) 6
26 USC 6001 6
26 USC 7402(a) 4, 10, 11
26 USC 7402(f) 2, 9, 11
26 USC 7604(b) 10
28 USC 1252 2
28 USC 1254 2
28 USC 1332 9
28 USC 1340 ..... 2, 4, 10, 11
31 CFR 103.34(b) 3, 9
31 CFR 103.34(b)(3) 3, 4, 9

Miscellaneous:
IRM 9781 § 426.3 ..... 3, 8
IRM 9781 § 426.5 8
Federal Rule of Civil Procedure 12(h) i
Administrative Law Brief, Certified Mail
#P24-572 1751 9

No. _____

AT LAW
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

JAMES JACQUES, GLORIA JACQUES, APPELLANTS,
AND
PACIFIC VALLEY BANK; BANK OF
AMERICA; AND CROCKER NATIONAL BANK,

v.

UNITED STATES OF AMERICA AND
TONY PACHECO, JR., REVENUE AGENT,
APPELLEES

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE NORTHERN DISTRICT OF CALIFORNIA
BY SPECIAL APPEARANCE

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The District Court's Order, September 8, 1982, has not been reported. The Court of Appeals Order, April 26, 1983, has not been reported. The denial for rehearing, June 30, 1983, was not reported.

JURISDICTION

Congress' Bank Secrecy Act violates the principles of the Constitution; Secretary of Treasury acts in excess of authority; the court assumed jurisdiction where none was conferred. The Court of Appeals order, April 26, 1982 (App A. infra, 5a). A Denial of Rehearing, June 30, 1983 (App A, infra, 7a). Notice of Appeal to this court, July 6, 1983 (App A, infra 8a). The jurisdiction of this court is invoked under 28 USC 1252, *Ansbro v. United States*, 159 U.S. 695 and under 28 USC 1254, *Burge v. Richardson*, 321 F. Supp. 646; and *Rhode Island v. Massachusetts*, 37 U.S. 657.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides in pertinent part:

The right of the people to be secure in their * * * papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation * * *.

Public Law 91-508, the so called Bank Secrecy Act, Title I requires in pertinent part:

Financial institutions to maintain records of their customers' identities, to make microfilm copies of checks and similar instruments, and to keep records of certain other items.

Article I, Section 8 of the United States Constitution provides in pertinent part:

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, * * * but all Duties, Imposts and Excises shall be uniform throughout the United States.

26 USC § 7402(f) states: For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of Title 28 of the United States Code.

28 USC § 1340 states: The district courts shall have original jurisdiction of any civil action arising out of any Act of Congress providing for internal revenue or revenue from imports or tonnage except matters within the jurisdiction of the Customs Courts.

STATEMENT

This case involves the question whether Congress was granted the power by the Constitution to delegate to an agency of the government the authority to require records to be created by using confidential data concerning private individuals' affairs, thereafter having the information maintained with the resultant effect of continual surveillance of private citizens without probable cause; and it involves the jurisdiction of the court.

1. Certain provisions of Public Law 91-508 contravene the Jacques' constitutional rights, e.g., to be secure in their papers and effects, not to be surveilled without probable cause, suffer no search and seizure without benefit of a warrant being issued, signed by a neutral magistrate, prior to the act of the seizure and copying of the data.

The Act of 1970 required the creation and maintenance of records, inter alia. 31 CFR § 103.34(b) requires each bank retain either the original or a microfilm or other copy or reproduction of documents granting signature authority over accounts. In pertinent part, 31 CFR § 103.34(b)(3) as amended 37 Fed. Reg. 23114 (1972), 38 Fed. Reg. 2174 (1973), effective Jan. 17, 1973, require the copying of only checks drawn on the bank except for those $100 or less.

The instant proceeding arose in 1980 when Revenue Agent, Tony Pacheco, Jr. summonsed the appellants' records from three banks. Appellants directed the banks not to comply. An enforcement action was begun in district court in 1981. App. A, infra, la). The Jacques intervened. The authority of the agency was questioned as Congress has not granted explicit statutory authority to use bank records to prove 'income'. IRM 9781 § 426.3. Mr. Pacheco summonsed bank records as a sanction to penalize the exercise of constitutional rights by the Jacques whom it was alledged he was investigating as individual citizens. Taking sanctions against citizens is beyond the authority of the agent for the reason the Jacques had made a claim of privilege in a statement as was their choice. The statement was used as a shield against the incursions of the Internal Revenue Service into the appellants' constitutionally protected rights. See *Reisman v. Caplin*, 375 U.S. 440 (1964).

Through the demonstrated lack of 'good faith' by the Secretary and his delegates, the district court erred in the enforcement of the

summonses (App. A, infra, 2a) without consideration of these facts.

Appearing specially on appeal, the jurisdiction and the authority of the agency was further questioned by the Jacques on two issues:

(a) The taxes the agency are attempting to coerce are not those described in Article I, Section 8 of the Constitution for which jurisdiction is conferred upon the district court through 26 USC §§ 7402(a) and 7604(a), and

(b) the USE of the coerced records sought from the banks.

2. The jurisdiction of the court was brought into question on the same issue as not arising under 28 USC 1340 which grants jursidiction to the court for enforcement of 26 USC and also for the abuse of the court's process by the agency's knowingly and willfully violating P.L. 91-508, 31 CFR § 103.34(b)(3), inter alia.

Throughout the government's brief, the Internal Revenue Code was deliberately misquoted as was the Intervenor-Appellants Jacques' brief.

Without a denial of stay (App. A, infra, 4a) and with a denial of rehearing in a Writ of Prohibition filed by the Jacques (App. A, infra, 3a), the records were obtained from the banks. The court of appeals granted the government's motion to dismiss for mootness as the only relief sought had been accomplished. (App. A, infra, 5a). The court of appeals erred in relying on a case involving accountant's records—the court found there is no accountant/client privilege—rather than considering the coerced confidential records relating to private individuals. The court also erred in not considering the law and jurisdictional issues; the court erred by remanding the case to the district court with the order to vacate (App. A, infra, 5a). The appellants' petitioned for a rehearing with a suggestion for rehearing en banc (App. A, infra, 6a), on the ground, inter alia, the court has a duty to hear and decide questions of law and jurisdiction. The petition was denied; the suggestion was rejected (App. A, infra, 7a). A notice of appeal was filed with this court (App. A, infra, 8a).

Appearing specially the appellant's have and do question the court's jurisdiction over the subject matter.

3. The question of the power of Congress to delegate to the Secretary of the Treasury the authority to record and maintain over a period of years information chronicling the affairs of private citizens

was raised for the first time on appeal. However late the question was raised by the appellants, in the case of *Glidden Company v. Zdanok*, 368 U.S. 814 (1961), the Supreme Court certified to the Attorney General that the constitutionality of a federal statute had been drawn in question, for the first time in a petition for certiorari, and that petition was granted. The appellants submit the present question of the constitutionality of a statute should have plenary consideration by this court with briefs on the merits and oral argument because of the court's duty to ensure Congress nor the inferior courts exceed their authority.

THE QUESTIONS ARE SUBSTANTIAL

1. "The presumption Congress will not pass an act without constitutional authority prevails until clearly demonstrated," *United States v. Harris*, 106 S. Ct. 635 (1882), places the heavy burden of demonstrating that Congress passed the Bank Secrecy Act, P.L.91-508, without authority and in violation of the principles of the Constitution. The principle involved in this instance is the right to be secure in one's papers and effects and not to have the government interfere in one's life, liberty and pursuit of happiness without probable cause supported by Warrent issued upon Oath. Constitution, Fourth Amendment.

In 1882, the court in *McGrain v. Daughtry*, 273 U.S. 135 (1927), found Congress has no authority to 'generally' investigate individuals. That ruling has never been overturned. "Sovereignity was, and is, in the people. It was entrusted *by* them, so far as was necessary for the purpose of forming a good government, to the federal convention . . ." *The Betsy*, 4 Dall 8, 1 L.Ed. 718 (1794). Emphasis added. However, through the so called Bank Secrecy Act's compulsory recordkeeping, "the government gets large access to one's beliefs, ideas, politics, religion, cultural concerns, and the like," *California Bankers Assn. v. Shultz*, 416 U.S. 21, 86 (1973) without the benefit of a search warrant issued by a neutral magistrate prior to the recording. [18 USC 2510(5); 18 USC 3104].

The government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, is now universally admitted. *M'Cullock v. Maryland*, 17 U.S. 316, (1819)

The congress has exceeded its enumerated powers by the violation of the citizen's right to confidential financial matters and their expectation of privacy and security in their papers and effects. It is the duty of the government to protect the sovereign citizens from the violation of their constitutional rights, and not to contravene them by subterfuge by manipulating these rights out of existence.

The privacy of bank records can be equated with the privacy expected in sending and receiving mail. Transactions have transpired for which records are transmitted through the bank, as private letters are transmitted through the post office. Just as one's mail is not susceptible to being made available to any uninvited third parties (see e.g. *Ex Parte Jackson*, 96 U.S. 727 (1877) one's private affairs passing through the bank for a very limited purpose are not to be confiscated by the Secretary in the transmission. The Jacques suggest to the court the violation of privacy in having their records seized, albeit through regulation, recorded [18 USC 2510(5)] and the copies maintained for the purpose of surveilling their every activity without any violation suspected or unsuspected, but maintained for some possible future use, flies in the face of the constitutional principles expected to be maintained in this country. [18 USC 3504].

The court in *California Bankers Assn. v. Shultz*, supra, found precedent for the recording and reporting of records involving incorporated and unincorporated associations, as opposed to the private sovereign individual. A statute was cited requiring the filing and subsequent publication of a corporate tax return which has been upheld against a Fourth Amendment challenge, *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1910). Also, the court cited the regulation of the Secretary of the Treasury for general authorization that records be kept by both business and individual taxpayers, 26 USC § 6001. Id., 416 U.S. at 45.

It is quite one matter to require records from their owners, who have constitutional rights, than it is to compel records to be manufactured at the command of the government. The government claims the records become ordinary records of the banks, however, Congress noted that in 'recent' years, circa 1973, that some banks had abolished or limited the practice of photocopying checks, etc. Id. at 27. Subsequently, through the Bank Secrecy Act, records were compelled to be made and maintained for the Secretary's use.

In *Burdeau v. McDowell*, 256 U.S. 465, 476 (1920), the court stated, "The papers having come into the possession of the government without a violation of petitioner's rights by the governmental authority, we see no reason why the fact that individuals, unconnected with the government, may have wrongfully taken them, should have prevented them from being held for use in prosecuting an offense where the documents are of an incriminating character."

It is suggested that Congress has by authorizing the requirement of records voided the above principle.

Through the Bank Secrecy Act, Congress has produced a result it cannot directly command—the deprivation of constitutional rights. *Speiser v. Randall*, 357 U.S. 513 (1958). Cf. *Boyd v. United States*, 116 U.S. 616 (1886); *United States v. Lombardo*, 241 U.S. 73 (1915).

The presumption that private records are no longer private as a result of Congress' Act and that there is a right to inquire into these records cannot escape constitutional restrictions revealing private affairs of individuals. *Bailey v. Alabama*, 219 U.S. 219, 239 (1910).

Congress cannot under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. *Linder v. United States*, 268 U.S. 5, 17 (1924). And to reiterate, the Congress is not invested with "general" power to inquire into private affairs and compel disclosures.

Congress may use means consistent with the Constitution including investing the Secretary of the Treasury with authority to prescribe regulations which are consistent with the law. *Boske v. Comingore*, 177 U.S. 459, 469 (1899).

Remembering the Constitution of the United States is the supreme law of the land, the judgment of this court is sought on the authority of Congress to enact the Bank Secrecy Act which violates fundamental rights of the Jacques and all other individual bank customers in the recording provisions.

2. It is always the inherent constitutional power of the judiciary to review illegal or manifestly arbitrary and capricious actions violative of a fundamental right. *State ex rel. DuPont-Fort Lewis School District 7 v. Bruno*, 62 Wash. 2d 790, 384 P2d 608. The term 'arbitrary and capricious' was defined in *Lillions v. Gibbs*, 289 P2d 203, 205 (1955) as:

"[W]illful and unreasoning action without consideration and in disregard of facts or circumstances."

The Secretary summons checks from banks to prove 'income' without express statutory authority from Congress providing for their use, for this obviously violates constitutional provisions by exhorting evidence by compulsive process, nor defining how deposits can prove 'income.' IRM 9781 §§ 426.3, 426.5. Additionally, the extent of the Secretary's authority as defined by the terms of regulations promulgated in CFR § 103.34(b)(3) are for copies of checks in excess of $100 and is also limited to the "on us" checks: checks drawn on the bank or issued and payable to it.

The Secretary of the Treasury is the head of an administrative body charged with specific administrative duties and invested with specific powers. Congress did not extend authority beyond the provisions of the Bank Secrecy Act to permit the Secretary to require banks to furnish "all" records pertaining to depositors, and, as an agency, cannot institute this action in excess of its granted authority. The Internal Revenue Service may not enlarge on the statute. *Edwards v. Keith*, 231 F. Rep. 110 (1916). As the three-judge District Court earlier determined, virtually all domestic financial transactions, including even personal checks and drafts, could conceivably be compelled for disclosure. That was found to be facially violative of the Fourth Amendment. Id., 416 U.S. at 42. Additionally, the Justices Powell and Blackman, concurring in the court's opinion, Id. 416 U.S. at 78-79, found at some point the government's intrusion in these areas would implicate legitimate expectations of privacy. There was concern for the potential of abuse without invocation of the judicial process. The Jacques suggest that the concerns for exceeding the stated boundaries were justified as the Secretary of the Treasury is now abusing the process.

The Secretary erred in knowingly assuming authority beyond his specific authorized powers indicating arbitrary and capricious action which comes, it is suggested, from the knowledge he acts with impunity as courts are barred from hearing his victims.

3. There is a substantial federal question involved as the federal courts assumed subject matter jurisdiction as an 'enforcing' court over "revenue laws" directly traceable to Article I, Section 8 of the Constitution in error. The court erred in continuing jurisdiction after

its attention was brought to the matter that the agency is attempting to coerce the "voluntary" tax which is not of the nature of the Article I, Section 8 class of indirect taxes. See *Bowers v. Kerbaugh-Empire Co.*, 271 U.S. 170 (1925) for explanation of direct and indirect taxes and that the Sixteenth Amendment did not extend the original taxing authority of Congress regarding Article I, Section 8 uniform taxes to any new subjects.

Neither the Secretary nor the Court can extend the authority conferred upon the Court but must accept the delimation of 28 USC 1340. Cf. *New Lamp Chimney Co. v. Andonia Brass & Copper Co.*, 91 U.S. 656.

Contrary to the congressional intent, the government claimed the court has original jurisdiction under Article III, Section 2 of the Constitution to enforce their administrative summons. (Government's brief, page 20.)

Federal courts are courts of limited jurisdiction and presumption arises that they are without jurisdiction unless contrary affirmatively appears. 28 USCA § 1332.

The government has not affirmatively presented proof of the court's jurisdiction on the conditions mandated by 26 USC § 7402(f).

The Secretary has not demonstrated the obligation of the appellants to submit to the jurisdiction of the Secretary after being squarely challenged. Administrative Law Brief, Certified Mail #P24-572-1751. The Secretary has not submitted 'proof on the record' of his jurisdiction over the Jacques. 5 USC 554(b)(2). (See *McNutt v. GMAC*, 298 U.S. 178 (1935); *Chapman v. Houston*, 441 U.S. 600 (1979). Consequently, as the proponent of the rule bears the burden of proof, 5 USC 554(d), the presumption arises that the Secretary erred, the Court erred, and the Court is without jurisdiction over the subject matter.

When federal courts do not address jurisdiction, the rules of the court are abused. The matter is of substantial consequence.

4. Because of the substantial federal questions presented by the Jacques in their appeals, the court erred by declaring the case 'moot.'

The case meets the provisions for rehearing of *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974), because the enforcement order adversely affects the Jacques and will continue to substantially affect their interest, in that should the enforcement order be permitted

to stand—other bank records will be summonsed. Cf. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971); *St. Pierre v. United States*, 319 U.S. 41, 42 (1942).

The pregnant appellants in *Roe v. Wade*, 410 U.S. 113 (1973) and in *Doe v. Bolton*, 410 U.S. 179 (1973) had long outlasted their pregnancies by the time their cases reached this court. *Super Tire v. McCorkle*, supra, at 126. Yet the mootness suggestion was not rejected because of the import of the situations on the public. The situations presented in this case equally concerns vast numbers of other citizens, and probably greater numbers than the above case, whose constitutional rights are being trampled and/or manipulated out of existence.

The assumed authority of Congress to pass an Act which is in violation of the Constitution is a foot in the door to institute other unconstitutional and manipulative acts to deprive citizens of their constitutional rights. The challenged congressional act continues in the Bank Secrecy Act, Public Law 91-508. The Secretary will repeat his unauthorized actions as heretofore described and complained of, not only in regards to the appellants but the general public, and the federal courts continue to assume jurisdiction over matters when the facts do not warrant it, i.e. 26 USC 7402 and 28 USC 1340.

In *Super Tire Engineering Co. v. McCorkle*, supra at 115, the court did note that the judiciary "must not close the door to the resolution of the important questions" presented in the case; when "constitutional rights have been violated, remedies for violations are not dependent upon fictionalized distinction." *Warden v. Hayden*, 387 U.S. 294 (1957), e.g. the seized coerced copies of private papers and effects do not belong to their rightful owners. The other legal fiction is that enforcement of administrative summonses receive judicial scrutiny and a judicial order. *United States v. United States District Court* 407 U.S. 297, 313-318 (1972). For in the 'existing legal process' there is no warrant supported by Oath of probable cause and issued by a neutral magistrate prior to the seizure of private data being copied. And then Congress deprives the court of denying the summons enforcement. 26 USC §§ 7604 and 7402. Thereafter, the issue is declared to be 'moot'. This congressional act is unconstitutional as it denies citizens due process.

The appellants complain that the absence of authority by both Congress and the Secretary for their separate acts void the court's jurisdiction over the subject matter. The limitation of 28 USC 1340 and 26 USC 7402(f) exclude the enforcement of the complained of summons by the court. The government's claim of the court's jurisdiction under the Constitution, Article III, Section 2 confirms the 'voluntary' tax is not of the Article I, Section 8 class which is the extent of the court's enforcing action.

"The supremacy of the Constitution as law is thus declared without qualification. That supremacy is absolute; the supremacy of a statute enacted by Congress is not absolute but conditioned upon its being made in pursuance of the Constitution." *Adkins v. Children's Hospital*, 261 U.S. 525, (1922). The Bank Secrecy Act does not meet that standard.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted,

James Jacques
In Propria Personam

Gloria Jacques
In Propria Personam

August 1983

APPENDIX A
COURT DOCUMENTS

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners, v. PACIFIC VALLEY BANK; BANK OF AMERICA; and CROCKER NATIONAL BANK. Respondents.	CIVIL NO. ORDER TO SHOW CAUSE RE ENFORCEMENT OF INTERNAL REVENUE SUMMONSES

Good cause having been shown by the petitioners upon their verified petition filed in the above-entitled proceeding on April 27, 1982, it is hereby:

ORDERED that respondents PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK appear in person or by their authorized representative before this Court on the 19th day of July, 1982, at 10:00 A.M. in Courtroom No. 16, 19th Floor, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California, and then and there show cause, if any they have, why they should not be compelled to appear and testify and produce books, records, and other documents as commanded by the summonses heretofore served upon them as alleged and set forth in particular in said petition; and it is further

///

ORDER TO
SHOW CAUSE

ORDERED that a certified copy of this Order to Show Cause, together with a copy of the aforesaid verified petition, be served upon each respondent in accordance with Rule 4 of the Federal Rules of Civil Procedure at least twenty-eight (28) days before the return date of this Order above specified; and it is further

ORDERED that within fourteen (14) days before the return date of this Order, the respondents and any party intervening herein may file and serve a written response to the verified petition supported by appropriate affidavit(s) or declaration(s) in conformance with 28 U.S.C. § 1746, as well as any motions they desire to make; that the petitioners may file and serve a written reply to such response, if any, within seven (7) days before the return date of this Order; that all motions and issues raised by the pleadings will be considered on the return date of this Order, and only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) or declaration(s) will be considered at the return of this Order, and any uncontested allegation in the petition will be considered admitted.

ORDERED this ____ day of _____, 1982, at San Francisco, California.

WILLIAM A. INGRAM

UNITED STATES DISTRICT JUDGE

ORDER TO SHOW CAUSE

FILED

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[illegible]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners, v. PACIFIC VALLEY BANK: BANK OF AMERICA: and CROCKER NATIONAL BANK, Respondents, and JAMES JACQUES, GLORIA JACQUES, JACQUES, INC., Intervenors, pro se.	NO. C-82-1826-WAI DECISION AND ORDER

The application of the United States of America and Tony Pacheco, Jr., Revenue Agent, for summons enforcement in the above-entitled action is GRANTED.

Plaintiffs have complied with 26 U.S.C., Section 7603, 7605, and 7609. Additionally, there has been compliance with Internal Revenue Manual, Section 4022.12(1). On the basis of the hearing conducted in this matter on July 19, 1982, and of all the papers and records on file herein, it does not appear that there is any adequate reason to deny the enforcement of these summons. Specifically, the Court finds that a second inspection notice under 26 U.S.C., Section 7605(b), is not required in these circumstances inasmuch as

there has been no prior request for the bank's records as distinguished from those of intervenors, and, in any event, the investigation to which this application is incident is on-going and continuing.

Furthermore, on the basis of the evidence and documents in this case, the Court finds as follows:

1. There is no showing that the investigation in progress was undertaken for improper motives or motives of harrasment.

2. The investigation is conducted for a legitimate purpose.

3. The inquiry encompassed in the summons in issue is relevant to that purpose.

4. The information sought is not already in possession of plaintiffs.

5. All administrative steps required by applicable law have been followed.

Based upon the foregoing, IT IS ORDERED that the release sought herein by plaintiffs be and the same hereby is GRANTED.

DATED: September 8, 1982

WILLIAM A. INGRAM
United States District Judge

FILED
DEC 10 1982
PHILLIP B. WINBERRY
CLERK U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES JACQUES, GLORIA JACQUES, Petitioners, v. UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, Respondent. UNITED STATES OF AMERICA: TONY PACHECO, JR., Real Parties in Interest.	)	NO. 82-7551 DC# C-82-1826-WAI Northern California ORDER

Before: FARRIS and NELSON, Circuit Judges.

The Petition for Rehearing, filed November 10, 1982, is DENIED.

MO CAL 11/8/82

998-3639

CROCKER NATIONAL BANK

BLOSSOM HILL-SNELL OFFICE / 444 BLOSSOM HILL ROAD, SAN JOSE, CALIFORNIA 95123

December 21, 1982

James Jacques
Gloria Jacques
445 Blossom Hill Road
San Jose, California 95123

Dear Mr. or Mrs. Jacques;

This is to notify you that the order enforcing the order form IRS is in full force and binding.

This is to also notify you that upon the request from IRS, we will be supplying them with the information which they requested on their original order.

Sincerely,

Donna B. Pratt
Assistant Manager

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WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners, v. PACIFIC VALLEY BANK; BANK OF AMERICA; and CROCKER NATIONAL BANK, Respondents.	NO. C-82-1826-WAI DENIAL OF STAY
JAMES JACQUES, GLORIA JACQUES, JACQUES, INC., Intervenors, pro se.	

Respondents request for a stay pending appeal is hereby denied.

DATED: 12 20 82

UNITED STATES DISTRICT JUDGE

DENIAL OF STAY

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PHILLIP B. [illegible]RY
CLERK U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK, Respondents-Appellees, and JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.	No. 82-4515 DC# CV-82-1826 WAI Northern California ORDER

Before: NELSON and REINHARDT, Circuit Judges

Appellees' motion to dismiss this appeal as moot is granted. Appellants' pending motions are denied as moot. This matter is remanded to the district court with direction to vacate the order appealed. United States v. Silva and Silva Accountancy Corp., 641 F.2d 710 (9th Cir. 1981).

MoCal 4/18/83

JAMES JACQUES, GLORIA JACQUES

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Intervenors Pro Per

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK; BANK OF AMERICA; and CROCKER NATIONAL BANK, Respondents-Appellants, JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.	C.A. #82-4515 DC# CV-82-1826-WAI Northern California Petition For Rehearing and Suggestion That Case Be Reheard in Banc (SPECIAL APPEARANCE)

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Rule 40 of the Federal Rules of Appellate Procedure, Intervenor-Appellants herein, respectively petition the judges of this honorable Court for a rehearing of the appeal in the above-entitled cause. In support of this petition, Intervenor-Appellants show the Court as follows:

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1. Although the circumstances have changed in this matter, the issues of jurisdiction by the Court and by the Internal Revenue Service over the subject matter and the persons have not yet been addressed as have not the issues of whether or not the rules and regulations and actions of the agency are in conformance with the Constitution and the laws of the United States.

2. The Secretary of the Treasury's requirement that private data be recorded and maintained under duress is illegal surveillance without probable cause and its USE a violation of the Fourth Amendment of the Constitution.

3. The Secretary of the Treasury and his delegates violate the Financial Privacy Act of 1978 through interference with the right to contract and not adhering to the requirements of the Financial Privacy Act of 1978.

4. The Intervenor-Appellants have by Special Appearance challanged the jurisdiction of the Court and the jurisdiction of the Internal Revenue Service over their persons and the subject matter. The Court of Appeals for the Ninth Circuit issued an Order, dated April 26, 1983, dismissing the above entitled appeal as moot, with the matter to be remanded to the district court with direction to vacate the order appealed from. The Court erroneously relied on United States v. Silva and Silva Accountancy Corp., (641 F2d 710 (9th Cir. (1981)).

(a) The argument that the Order has been complied with thus mooting any controversy is not confronting the issues raised which are required to be addressed, i.e. jurisdiction.

(b) The court has a duty to examine and decide

questions of law and jurisdiction. [Florida East Coast Railway Co., v. United States (1914), 234 U.S. 167, Flota Mercante Grancolombiana, S.A. v. Federal Maritime Commissioner, (1962), 302 F2d 887, 111 U.S. App D.C. 302].

(c) Authority to summons and use bank deposits to prove income has not been approved by Congress (IR Manual 9781, §426.3, 426.5). Jurisdiction has not been granted to the court for enforcement of Internal Revenue administrative summons in a situation other than itemized in 28 USC 1340. [26 USC 7402(f)] Congress has not made other provisions; The Secretary of the Treasury, his agents nor the government attorneys cannot cure the defect.

(d) In United States v. Kulukundis, 329 F2d 197, 199 (1961), the court stated, "Our decision in Rasquin v. Muccini, 72 F2d 688 (2 Cir. 1934), cited by appellants was under an earlier revenue act which did not authorize a summons in aid of the collection of a tax." Intervenor-Appellants urge the court to take notice of the fact that the Constitution was not amended between 1934 and 1954 to permit the Congress the authority to violate the Constitution, Article I, Sec. 8, or the Bill of Rights guaranteeing the rights of the sovereign citizens. Acts contrary to the Constitution are null and void.

(e) Where the court has "general" jurisdiction but due to a defect in the law, the court wants jurisdiction to enforce its judgments and decrees at law and in equity and thus should not even exercise that "general" jurisdiction over the supposed cause, (La. v. North America Ld., 106 La. 621) and equity has no jurisdiction to cure the defect (McGraw v. Gortner,

96 Md 489), for "A law which restricts their power to render or enforce a judgment is therefore a limitation upon the exercise of their jurisdiction; and a law which destroys or impairs their judgments without such law would have, is equally so." (Fordyce v. Beecher, 2 Tex CA 29, 31 SW 179). [See the Constitution, Article I, Sec. 8; Brushaber v. Union Pacific R.R. Co., (1916) 240 U.S.1].

(f) Jurisdiction can be challenged at any time. (Brady v. Richardson, 18 Ind. 1), for absent jurisdiction, judgments are void and are no bar to the enforcement of any other rights. (Sandnes v. Sheriff, 299 NYS 9).

(g) Once jurisdiction is challenged, the court or the agency cannot proceed (Melo v. U.S., 505 F2d 1026; Joyce v. U.S., 474 F2d 215), the burden of proof shifting to the government (Rosemound v. Lamber, 469 F2d 416) which must produce on the record all jurisdictional facts related (Lantana v. Hopper, 102 F2d 118; Chicago v. NY, 337 F Supp 150; 344 F Supp 929), except in race cases as in Nestor v. Hershey, 425 F2d 504. In the federal arena, "The jurisdiction of the federal court is carefully guarded against expansion by judicial interpretation or by prior action (e.g. consent) of the parties." (Amer. F. & G. v. Finn, 341 U.S. 6, 17, 18); such jurisdictional facts being required to appear in the record (Baer v. Aut. Assn., 503 F2d 393) (Emphasis added.) particularly where one objects to "official and judicial notice" (5USC 556(e), Fed. Rules Ev. 201, etc.; see Jayson, Moore's Federal Practice, M. Bender, Vol. 1, 1A, 1A pt. 2 etc.).

(h) When the agency has not held a hearing before

taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination the court shall - (1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law [28 USC §2347(1); 5 USC 554(b)(2); 5 USC 556 (d)].

5. The government cited the Secretary of the Treasury's prescribing regulations, certain recordkeeping and reporting requirements for banks and other financial institutions as authority to require all summonsed records to be produced. The Bank Secrecy Act of October 26, 1970, Pub. L. No. 91-508, 84 Stat. 1114, Secs. 101, 102, 121-129 (12 U.S.C. §§ 1730d, 1829d, 1951-1959) and Secs. 202-213, 231-235, 241-242 (31 U.S.C. §§ 1051-1062, 1081-1083, 1101-1105, 1121-112)).

(a) The obtaining and using the material required to be recorded and maintained is tantamount to the illegal interception of a wire or oral communication. (See California Bankers Assn. v. Shultz, 416 U.S. 49, Justice Douglas dis., p. 90). Recording is illegal surveillance without probable cause. This illegal surveillance by the Secretary of private personal affairs is without probable cause as protected against in the Fourth Amendment, and is a lack of ' due process under the law' as guaranteed under the Fifth Amendment.

(b) Surveillance without probable cause is violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

(c) The banks do not freely record, maintain or disclose. This is compelled by court order - and in this instance, disclosed through IRS tactics which were illegal and

fraudulent. The records obtained through compulsion were illegally intercepted while Intervenor-Appellants were exercising their basic common law right guaranteed by the Constitution to contract privately for the services of financial institutions.

(d) There is no public information or public meetings involved in the surveillance of personal private documents. (See United States v. Oaks, 527 F2d 937, 941 (1975)). This fact is confirmed by the Public Law requiring banks to record and maintain data for the Secretary's use. Public documents do not need a public law requiring them to be made available to the Secretary.

(e) The requiring of recording and maintaining of bank records is the Secretary's insurance policy which is paid in advance by the loss of Fourth and Fifth Amendment rights of the Intervenor-Appellants and in violation of the Financial Privacy Act of 1978. There was no investigation, suspicion or other probable cause for the Secretary to require surveillance for a period of three years by recording private documents revealing the most intimate and complete catalog of the Jacques lives. It is not as though all of this data had been discarded into a garbage can to be sifted through by some government agent. The "high degree of usefulness in criminal, tax, or other regulatory investigations or proceedings" is purely speculative and without probable cause.

(f) 18 USC 3504 prohibits evidence acquired by "unlawful act" involving the use of any electronic, mechanical, or other device in violation of the Constitution or laws of the United States or any regulation or standard promulgated

pursuant thereto. The interception describes the Secretary's actions of requiring recording of private communication by electronic process in combination with the magnetic and mechanical processes. Regardless of the form of equipment utilized, the end result is the same - unwarranted interference without probable cause.

(6) The copying of private information is interference with the freedom of contracting as guaranteed by the Constitution (See 28 USC 1981). Intervenor-Appellants entered into an implicit agreement with the banks involved to maintain records in confidence according to the Financial Privacy Act of 1978. There was no agreement for the banks to record and maintain records for a possible future investigation by the Secretary of the Treasury.

(a) Government interference with this basic right is a gross violation of the Constitution and the Financial Privacy Act of 1978, which is Public Law 95-630, Sec. 1101, et seq.

(b) Sec. 1101 defines for the purposes of this title the term of - (H) the Secretary of the Treasury, with respect to the Bank Secrecy Act* and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II) -

*limits recording to checks in excess of $100, nothing else.

(c) Sec. 1103(a) provides that: No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in the financial records of any customer except in accordance with the provision

of this title.

(d) Sec. 1103(b) provides that: A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provision of this title.

(e) The Internal Revenue Service obtained the financial records by deceit and fraud by furnishing the Crocker Bank with an Order denying a rehearing in #82-7551 to obtain records, and secured records from Bank of America without a Denial of Stay.

(7) The case cited in the court's order does not relate to the circumstance of this case.

(a) The court should take notice that in Couch v. United States, 409 US 322, the Court observed that no federal court has recognized an accountant-client privilege, but that is not the case with financial records as demonstrated by the Financial Privacy Act of 1978 (Pub L. 95-630).

(b) The case cited in the Court's Order, United States v. Silva and Silva Accountancy Corp. 641 F2d 710 (9th Cir. (1981)) was relied upon in error because the financial records in this case are protected by law while accountant's records are not.

Suggestion That Case Be Reheard In Banc

Pursuant to the provisions of Rule 35 of the Federal Rules of Appellate Procedure, Intervenor-Appellants respectfully suggests to the judges of this honorable Court that the above-entitled cause is appropriate for consideration on rehearing

by all the judges of this Court convened in banc, and in support of this suggestion Intervenor-Appellants shows:

1. The three-judge District Court (Ninth District) concluded with one judge dissenting, that the domestic reporting provisions of . . . Title II of the Bank Secrecy Act. . . were repugnant to the Fourth Amendment of the Constituion. (California Bankers Assn. v. Shultz, 347 F Supp 1242 (1972). The Supreme Court reversed this decision only on the ground of the recording and reporting provisions. It did not consider the USE of the records which the three-judge District Court had. Because there was no aggrieved party before the court, the court could not consider that provision. The Intervenor-Appellants are now aggrieved parties before the court because of the USE of the domestic reporting provision of the Bank Secrecy Act. The provision for surveillance without probable cause and intercepting and using private data involves a question of exceptional importance.

2. The Internal Revenue Service has and does act without statutory authority and without the limits of agency authority by violating the Constitutional rights of citizens as has been detailed throughout this procceding by the Intervenor-Appellants. Given the voluntary nature of the tax system, this agency's abuses are of vital concern to the Intervenor-Appellants, as well as the entire American population. Because the actions of the Internal Revenue Service are commonly compared with the Gestapo, curbing their lawlessness is imperative for a free Nation. It is the duty of the Court to control abusive actions of government. Quite possible if the Court abdicates

their responsibility, the people will rise up to the occasion as occurred at the Boston Tea Party. History does have a way of repeating. It is not the duty of the Court to compensate for Congress' shortcomings of not providing for legal taxation.

For these reasons the Court needs to confront the issues raised by the Intervenor-Appellants.

3. Jurisdiction has never been established in this matter before the Court. That is the first consideration for if the Court is without jurisdiction, there can be no proceedings.

Statement of Properia Persona

We, James Jacques and Gloria Jacques, express belief, based on a reasoned and studied judgment, that this appeal involves a question of exceptional importance, to-wit,
Is the USE of private financial records recorded and maintained for the Secretary of the Treasury a violation of one's expectations of security in their persons, papers, and effect against unreasonable search and seizure without warrants supported by oath or affirmation and particularly describing the thing to be searched and seized, and is the recording of private financial records illegal surveillance without probable cause?

Wherefore, Intervenor-Appellants respectfully requests:

1. That a rehearing of the appeal in the above-entitled cause be granted; and

2. That the honorable judges of this Court order that the above-entitled cause be heard by the court in banc.

Date: May 6, 1983

JAMES JACQUES - Pro Per

GLORIA JACQUES - Pro Per

Pet. for Rehear and Sug. That Case be Reheard in Banc (10)

CERTIFICATE

We hereby certify that the foregoing petition for rehearing is not frivolous and is presented in good faith and not for delay.

May 6, 1983

JAMES JACQUES

GLORIA JACQUES

CERTIFICATE OF SERVICE

It is hereby certified that service of this Petition for Rehearing and Suggestion That Case Be Reheard In Banc has been made on appellees in said action by depositing in the United States mail in a sealed envelope with postage thereon, prepaid in full, three true and correct copies of the above-mentioned petition addressed to:

U. S. Department of Justice
Tax Division
Washington, D. C. 20530

Attn: Mr. Michael L. Paup
Chief, Appellate Section

Dated: May 6, 1983

James Jacques
JAMES JACQUES

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 30 1983

PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent, Petitioners-Appellees, vs. PACIFIC VALLEY BANK, BANK OF AMERICA, and CROCKER NATIONAL BANK, Respondents-Appellees, and JAMES JACQUES, GLORIA JACQUES, Intervenors-Appellants.	No. 82-4515 DC# CV-82-1826 WAI Northern California ORDER

Before: NELSON and REINHARDT, Circuit Judges.

Appellants' petition for rehearing of the April 26, 1983 order dismissing this appeal is denied. The suggestion for rehearing en banc is rejected.

MoCal 4/18/83

JAMES JACQUES, GLORIA JACQUES

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Intervenors Pro Per

RECEIVED
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

JUN - 6 1983

FILED
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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA and TONY PACHECO, JR., Revenue Agent,	C.A. #82-4515
Petitioners-Appellees,	DC# CV-82-1826-WAI Northern California
vs.	SPECIAL APPEARANCE
PACIFIC VALLEY BANK; BANK OF AMERICA; and CROCKER NATIONAL BANK,	
Respondents - Appellants,	
JAMES JACQUES, GLORIA JACQUES,	
Intervenors - Appellants.	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that the Jacques, Intervenor-Appellants in this case, hereby appeal to the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Ninth Circuit dated April 26, 1983, rehearing denied by order dated June 30, 1983, enforcing the judgment of the United States District Court for the District of Northern California dated September 8, 1982.

/ / / / /

This appeal is taken pursuant to 28 U.S.C. §1252, 28 U.S.C. §1254 and 18 U.S.C. §242.

James Jacques

JAMES JACQUES - PRO PER

Gloria Jacques

GLORIA JACQUES - PRO PER

1336 Hillcrest Drive
San Jose, CA 95120

APPENDIX B
CONSTITUTION, STATUTES AND REGULATIONS

APPENDIX B

The Fourth Amendment of the United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, Section 8 of the United States Constitution:

> Clause 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article III, Section 2 of the United States Constitution:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -to all Cases affecting Ambassadors, other public Ministers and Consuls; -to all Cases of admiralty and maritime Jurisdiction; -to Controversies to which the United States shall be a Party; -to Controversies between two or more States; -between a State and Citizens of another State; -between Citizens of different States; -between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.
>
> In All Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.
>
> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crime shall have been committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

18 USC § 2510(5) provides:

"electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than-

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties;

(b) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

18 USC § 3104 provides:

Issuance of search warrant on affidavit; contents to identify persons or place; command to search forthwith, Rule 41(c). (See Federal Rules of Criminal Procedure). (June 25, 1948, ch 645, § 1, 62 Stat. 819.)

18 USC § 3504(b) provides:

As used in this section "unlawful act" means any act [involving] the use of any electronic, mechanical, or other device (as defined in section 2510(5) of this title [18 USCS § 2510(5)] in violation of the Constitution or laws of the United States or any regulation or standard promulgated pursuant thereto. (Added Oct. 15, 1970, P.L. 91-452, Title VII, Part B, § 702(a), 84 Stat. 935.)

October 26, 1970
H. R. 15073

AN ACT

To amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal Deposit Insurance Act, amendments.

TITLE I—FINANCIAL RECORDKEEPING

Chapter | Sec.
1. Insured Banks and Insured Institutions | 101
2. Other Financial Institutions | 121

Chapter 1.—INSURED BANKS AND INSURED INSTITUTIONS

Sec.
101. Retention of records by insured banks.
102. Retention of records by insured institutions.

§ 101. Retention of records by insured banks

84 Stat. 993; 81 Stat. 915; 12 USC 1818, 1821.

The Federal Deposit Insurance Act is amended (1) by redesignating sections 21 and 29 as 22 and 23, respectively, and (2) by inserting the following new section immediately after section 20:

"SEC. 21. (a)(1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

"(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(b) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(c) Each insured bank shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement or duty so imposed under this subsection as are consistent with the purposes of this section. Exemptions.

"(d) Each insured bank shall make, to the extent that the regulations of the Secretary so require, the—

"(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

"(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c).

"(e) Whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured bank which is required to be reported or recorded under the Currency and Foreign Transactions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances. Post, p. 1114.

"(f) In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

"(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

"(h) The Secretary shall include in his annual report to the Congress information on the implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law. Report to Congress.

Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

§ 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $5,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received regarding a transaction which results in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States;

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

§ 103.34 Additional records to be made and retained by banks.

(a)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, or each deposit or share account opened with a bank after June 30, 1972, a bank shall, within 45 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 45-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (b)(11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction.

(2) The 45-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS–4 or SS–5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (a)(1) of this section need not be secured for accounts or transactions with the following: (i) Agencies and instrumentalities of Federal, State, local or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are (A) ambassadors, ministers, career diplomatic or consular officers, or (B) naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families; (iv) aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29,

4b-1

1945 (22 U.S.C. sec. 288), and the members of their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter, (viii) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club and similar installment savings programs provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States. In instances described in paragraphs (a)(3), (viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(4) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or, insofar as such checks are concerned, issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on government agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and